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**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES**

In re Application of	:	Customer Number: 46320
	:	
Ivan HENINGER et al.	:	Confirmation Number: 5939
	:	
Application No.: 10/711,940	:	Group Art Unit: 2132
	:	
Filed: October 14, 2004	:	Examiner: B. Lanier
	:	
For:		SYSTEMS, METHODS, AND COMPUTER READABLE MEDIUM FOR AVOIDING A NETWORK ADDRESS COLLISION

APPEAL BRIEF

Mail Stop Appeal Brief - Patents
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

This Appeal Brief is submitted in support of the Notice of Appeal filed December 8, 2008, wherein Appellants appeal from the Examiner's rejection of claims 1, 7, and 13.

I. REAL PARTY IN INTEREST

This application is assigned to IBM Corporation by assignment recorded on October 14, 2004, at Reel 015243, Frame 0217.

II. RELATED APPEALS AND INTERFERENCES

Appellants are unaware of any related appeals and interferences.

III. STATUS OF CLAIMS

Claims 1, 7, and 13 are pending and two-times rejected in this Application. Claims 2-6, 8-12, and 14-18 have been cancelled. It is from the multiple rejections of claims 1, 7, and 13 that this Appeal is taken.

IV. STATUS OF AMENDMENTS

The claims have not been amended subsequent to the imposition of the Second and Final Office Action dated September 11, 2008 (hereinafter the Second Office Action).

V. SUMMARY OF CLAIMED SUBJECT MATTER

1 Referring to Figure 1 and also to independent claim 1, a system for avoiding a network
2 address collision is disclosed. The system 100 comprises a server 120B, an originating network
3 130A, and a computer 160 (lines 8-10 of paragraph [0020]). The server 120B distributes
4 addresses for accessing a target network 130B (lines 6-7 of paragraph [0021]). The computer
5 160 is connected to the originating network 130A (lines 8-9 of paragraph [0020]), and the
6 computer 160 is identified on the originating network 130A with a first address, and the first
7 address has a first network address (lines 1-2 of paragraph [0026]). The computer 160 requests a
8 connection to the target network 130B (lines 5-7 of paragraph [0026]), and the server 120B
9 returns a second address having the second network address to the computer 160 in response to
10 the computer's request (lines 9-12 of paragraph [0026]). The computer 160 compares the first
11 and second network addresses to determine whether there is a conflict (lines 1-3 of paragraph
12 [0027]), and upon making a determination of a conflict between the first and second network
13 addresses, the computer 160 reports that the second network address is in conflict (lines 3-6 of

1 paragraph [0027]). The server 120B is a virtual private network (VPN) server (lines 1-2 of
2 paragraph [0022]) and generates a different network address in response to the computer's report
3 by selecting the different network address from a pool of pre-defined addresses (lines 6-8 of
4 paragraph [0027]); lines 4-5 of paragraph [0028]).

5 Referring to Figure 4 and also to independent claim 7, a method for avoiding a network
6 address collision is disclosed. In step 410, a computer on an originating network is identified
7 with a first address, and the first address has a first network address (lines 2-3 of paragraph
8 [0032]; lines 1-7 of paragraph [0024]). In step 420, a connection to a target network through a
9 virtual private network (VPN) server is requested (lines 4-5 of paragraph [0032]; lines 5-7 of
10 paragraph [0026]). In step 430, a second address having the second network address is returned
11 in response to the request step (line 5 of paragraph [0032]). In step 440, the first and second
12 network addresses are compared to determine whether there is a conflict (lines 5-6 of paragraph
13 [0032]). In step 450, the second network address being in conflict is reported, upon making a
14 determination of a conflict between the first and second network addresses (lines 9-11 of
15 paragraph [0032]). In steps 460/470, a different network address is generated in response to the
16 reporting by selecting the different network address from a pool of pre-defined addresses (lines
17 1-4 of paragraph [0033]; lines 4-5 of paragraph [0028]).

18 Referring to Figure 4 and also to independent claim 13, a computer readable medium
19 whose contents cause a computer system to avoid a network address collision is disclosed. The
20 computer system having a client program and a server program and performs the following steps.
21 In step 410, a computer on an originating network is identified with a first address, and the first
22 address has a first network address (lines 2-3 of paragraph [0032]; lines 1-7 of paragraph
23 [0024]). In step 420, a connection to a target network through a virtual private network (VPN)

1 server is requested (lines 4-5 of paragraph [0032]; lines 5-7 of paragraph [0026]). In step 430, a
2 second address having the second network address is returned in response to the request step
3 (line 5 of paragraph [0032]). In step 440, the first and second network addresses are compared to
4 determine whether there is a conflict (lines 5-6 of paragraph [0032]). In step 450, the second
5 network address being in conflict is reported, upon making a determination of a conflict between
6 the first and second network addresses (lines 9-11 of paragraph [0032]). In steps 460/470, a
7 different network address is generated in response to the reporting by selecting the different
8 network address from a pool of pre-defined addresses (lines 1-4 of paragraph [0033]; lines 4-5 of
9 paragraph [0028]).

10

VI. GROUND OF REJECTION TO BE REVIEWED ON APPEAL

1. Claims 1, 7, and 13 under 35 U.S.C. § 103 for obviousness based upon Bahl, U.S. Patent No. 6,957,276, in view of Sato et al., U.S. Patent No. 7,047,314 (hereinafter Sato).

VII. ARGUMENT

**THE REJECTION OF CLAIMS 1, 7, AND 13 UNDER 35 U.S.C. § 103 FOR OBVIOUSNESS
BASED UPON BAHLE IN VIEW OF SATO**

For convenience of the Honorable Board in addressing the rejections, claims 7 and 13 stand or fall together with independent claim 1

As is evident from Appellants' previously-presented comments during prosecution of the present Application and from Appellants' comments below, there are questions as to how the limitations in the claims correspond to features in the applied prior art. In this regard, reference is made to M.P.E.P. § 1207.02, entitled "Contents of Examiner's Answer." Specifically, the following is stated:

(A) CONTENT REQUIREMENTS FOR EXAMINER'S ANSWER. The examiner's answer is required to include, under appropriate headings, in the order indicated, the following items:
...

(9)(e) For each rejection under 35 U.S.C. 102 or 103 where there are questions as to how limitations in the claims correspond to features in the prior art even after the examiner complies with the requirements of paragraphs (c) and (d) of this section, the examiner must compare at least one of the rejected claims feature by feature with the prior art relied on in the rejection. The comparison must align the language of the claim side-by-side with a reference to the specific page, line number, drawing reference number, and quotation from the prior art, as appropriate. (emphasis added)

Therefore, if the Examiner is to maintain the present rejections and intends to file an Examiner's Answer, the Examiner is required to include the aforementioned section in the Examiner's Answer.

Appellants have compared the statement of the rejection found on pages 3 and 4 of the Second Office Action with the statement of the rejection found on pages 2 and 3 of the First Office Action. Upon making this comparison, Appellants have been unable to discover any

1 substantial differences between the respective statements of the rejection. As such, Appellants
2 proceed on the basis that the Examiner's sole response to the arguments presented in Appellants'
3 First Amendment dated July 21, 2008 (hereinafter the First Response) is found on page 2 of the
4 Second Office Action in the section entitled "Response to Arguments."

5
6

7 On October 10, 2007, the Patent Office issued the "Examination Guidelines for
8 Determining Obviousness Under 35 U.S.C. 103 in View of the Supreme Court Decision in KSR
9 International Co. v. Teleflex Inc.," 73 Fed. Reg. 57,526 (2007) (hereinafter the Examination
10 Guidelines). Section III is entitled "Rationales To Support Rejections Under 35 U.S.C. 103."
11 Within this section is the following quote from the Supreme Court: "rejections on obviousness
12 grounds cannot be sustained by merely conclusory statements; instead there must be some
13 articulated reasoning with some rational underpinning to support the legal conclusion of
14 obviousness." KSR Int'l Co. v. Teleflex Inc., 127 S. Ct. 1727, 1741 (2007) (quoting In re Kahn,
15 441 F.3d 977, 988 (Fed. Cir. 2006)).

16
17 Referring to the first column on page 57,529 of the Examination Guidelines, the
18 following is a list of rationales that may be used to support a finding of obviousness under 35
19 U.S.C. § 103:

20 (A) Combining prior art elements according to known methods to yield
21 predictable results;

22 (B) Simple substitution of one known element for another to obtain
23 predictable results;

24 (C) Use of known technique to improve similar devices (methods, or
25 products) in the same way;

(D) Applying a known technique to a known device (method, or product) ready for improvement to yield predictable results;

(E) "Obvious to try" - choosing from a finite number of identified, predictable solutions, with a reasonable expectation of success;

(F) Known work in one field of endeavor may prompt variations of it for use in either the same field or a different one based on design incentives or other market forces if the variations would have been predictable to one of ordinary skill in the art;

(G) Some teaching, suggestion, or motivation in the prior art that would have led one of ordinary skill to modify the prior art reference or to combine prior art reference teachings to arrive at the claimed invention.

Upon reviewing the Examiner's analysis in the paragraph spanning pages 3 and 4 of the Second Office Action, the Examiner appears to be employing rationale (G). If the Examiner is not relying upon rationale (G), Appellants request that the Examiner clearly identify the rationale, as described in the Examination Guidelines, being employed by the Examiner in rejecting the claims under 35 U.S.C. § 103.

Referring again to rationale (G), as discussed on page 57,534 of the Examination Guidelines, the following findings of fact must be articulated by the Examiner:

(1) a finding that there was some teaching, suggestion, or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings;

(2) a finding that there was reasonable expectation of success; and

(3) whatever additional findings based on the Graham factual inquiries may be necessary, in view of the facts of the case under consideration, to explain a conclusion of obviousness.

Referring to the paragraph entitled "Office Personnel as Factfinders" on page 57,527 of the Examination guidelines, the following was stated:

Office personnel fulfill the critical role of factfinder when resolving the *Graham* inquiries. It must be remembered that while the ultimate determination of obviousness is a legal conclusion, the underlying *Graham* inquiries are factual. When making an obviousness rejection, Office personnel must therefore ensure that the written record includes findings of fact concerning the state of the art and the teachings of the references applied. In certain circumstances, it may also be important to include explicit findings as to how a person of ordinary skill would have understood prior art teachings, or what a person of ordinary skill would have known or could have done. Factual findings made by Office personnel are the necessary underpinnings to establish obviousness.

In Graham v. John Deere Co., 383 U.S. 1, 148 USPQ 459 (1966), the Supreme Court set forth the factual inquiries that are to be applied when establishing a background for determining obviousness under 35 U.S.C. 103. These factual inquiries are summarized as follows:

- (A) Determine the scope and content of the prior art;
- (B) Ascertain the differences between the prior art and the claims at issue;
- (C) Resolve the level of ordinary skill in the pertinent art; and
- (D) Evaluate any indicia of nonobviousness.

However, in order to make a proper comparison between the claimed invention and the prior art, the language of the claims must first be properly construed. See In re Paulsen, 30 F.3d 1475, 1479 (Fed. Cir. 1994). See also, Panduit Corp. v. Dennison Mfg. Co., 810 F.2d 1561, 1567-68 (Fed. Cir. 1987) (In making a patentability determination, analysis must begin with the question, "what is the invention claimed?" since "[c]laim interpretation, ... will normally control the

remainder of the decisional process.") See Gechter v. Davidson, 116 F.3d 1454, 1460 (Fed. Cir. 1997) (requiring explicit claim construction as to any terms in dispute).

Upon reviewing the Examiner's analysis in view of the requirements discussed above necessary for the Examiner to establish a prima facie case of obviousness, Appellants recognize several deficiencies in the Examiner's analysis.

To properly make a finding of obviousness, a comparison between the applied prior art and the claims at issue must be made to ascertain the differences between what is being claimed and the teachings of the applied prior art. Moreover, before making a proper comparison between the claimed invention and the prior art, the language of the claims must first be properly construed.¹ This burden has not been met.

As noted by the Supreme Court in Festo Corp. v. Shoketsu Kinzoku Kogyo Kabushiki Co.,² a clear and complete prosecution file record is important in that "[p]rosecution history estoppel requires that the claims of a patent be interpreted in light of the proceedings in the PTO during the application process." The Courts that are in a position to review the rejections set forth by the Examiner (i.e., the Board of Patent Appeals and Interferences, the Federal Circuit, and the Supreme Court) can only review what has been written in the record; and therefore, the

¹ See In re Paulsen, 30 F.3d 1475, 1479 (Fed. Cir. 1994); see also, Panduit Corp. v. Dennison Mfg. Co., 810 F.2d 1561, 1567-68 (Fed. Cir. 1987) (In making a patentability determination, analysis must begin with the question, "what is the invention claimed?" since "[c]laim interpretation, . . . will normally control the remainder of the decisional process"); see Gechter v. Davidson, 116 F.3d 1454, 1460 (Fed. Cir. 1997) (requiring explicit claim construction as to any terms in dispute).

² 535 U.S. 722, 122 S.Ct. 1831, 1838, 62 USPQ2d 1705, 1710 (2002).

1 Examiner must clearly set forth the rationale for the rejection and clearly and particularly point
2 out those elements within the applied prior art being relied upon by the Examiner in the
3 statement of the rejection.

4
5 This requirement that the Examiner clearly set forth the rationale for the rejection and
6 clearly and particularly point out those elements within the applied prior art being relied upon by
7 the Examiner in the statement of the rejection is found in with 37 C.F.R. § 1.104(c), which reads:

8 In rejecting claims for want of novelty or for obviousness, the examiner must cite the best
9 references at his or her command. When a reference is complex or shows or describes inventions
10 other than that claimed by the applicant, the particular part relied on must be designated as nearly
11 as practicable. The pertinence of each reference, if not apparent, must be clearly explained and
12 each rejected claim specified.
13

14 Moreover, in the unpublished opinion of Ex parte Pryor³, the Board of Patent Appeals
15 and Interferences recognized the necessity for an Examiner to supply sufficient information to
16 establish a prima facie case of anticipation. Specifically, the Board wrote:

17 At the outset, we note the examiner has been of little help in particularly explaining the
18 rejections on appeal. A mere statement that claims stand rejected "as being clearly anticipated by"
19 a particular reference, without any further rationale, such as pointing out corresponding elements
20 between the instant claims and the applied reference, fails to clearly make out a prima facie case of
21 anticipation. (emphasis in original)
22

23 Despite the very specific requirement for the Examiner to clearly set forth the rationale for the
24 rejection and clearly and particularly point out those elements within the applied prior art being
25 relied upon by the Examiner, the Examiner has failed to do so. Instead, the Examiner's statement
26 of the rejection simply consists of the Examiner repeating, almost word-for-word, each of the
27 recited claims and asserting that the entire claim is disclosed by certain specified passages within
28 Bahl. For example, the entirety of the Examiner's analysis regarding Bahl simply refers to
29 column 13, lines 56-67. Thus, the manner in which the Examiner conveyed the statement of the

³ Appeal No. 1997-2981.

1 rejection, however, has not "designated as nearly as practicable" the particular parts in Bahl
2 being relied upon in the rejection.

3
4 It is practicable for the Examiner, for each of the claimed elements, to specifically
5 identify each feature within Bahl being relied upon to teach each of the particular claimed
6 elements. For example, the Examiner can "specifically identify" a feature, corresponding to the
7 claimed element, within the applied prior art by identifying a reference numeral associated with
8 the feature. In addition to or alternatively, the Examiner may cite to a brief passage (i.e., 1 or 2
9 lines or even a portion of a line) within the applied prior art that identifies the feature that
10 corresponds to the claimed element. However, merely citing a long passage or an entire
11 paragraph to disclose a single (or multiple) claimed elements does not designate, "as nearly as
12 practicable," the particular features within Bahl being relied upon by the Examiner in the
13 rejection.

14
15 The importance of the specificity requirement of 37 C.F.R. § 1.104(c) is also further
16 evident in M.P.E.P. § 706.07, which states:

17 The examiner should never lose sight of the fact that in every case the applicant is entitled to a full
18 and fair hearing, and that a clear issue between applicant and examiner should be developed, if
19 possible, before appeal.
20

21 A clear issue, however, cannot be developed between Appellants and the Examiner where the
22 basis for the Examiner's rejection of the claims is ambiguous. The Examiner's "analysis"
23 provides little insight as to (i) how the Examiner is interpreting the elements of the claims and
24 (ii) what specific features within Bahl the Examiner believes identically discloses the specific
25 elements (and interactions between elements) recited in the claims. By failing to specifically
26 identify those features within Bahl being relied upon in the rejection, the Examiner has

1 essentially forced Appellants to engage in mind reading and/or guessing to determine how the
2 Examiner is interpreting the elements of the claims and what specific features within Bahl the
3 Examiner believes identically disclose the claimed invention.

4
5 Notwithstanding the lack of specificity in the Examiner's rejection, Appellants have
6 reviewed, in detail, the Examiner's cited passage within Bahl of column 13, lines 56-67, which is
7 reproduced below:

8 To minimize the possibility of such an address conflict, one embodiment of the DHCP
9 server performs conflict detection before assigning an address. Likewise, a DHCP client may
10 perform conflict detection through the generation of gratuitous ARPs upon getting a new IP
11 address. In this way, once it discovers the conflict, the DHCP client can send a DHCP DECLINE
12 packet to the DHCP server, thus informing it of the conflict. The DHCP server then marks the
13 address as BAD and the administrator is alerted through an alerting mechanism such as discussed
14 in the RFC2131. After sending the DECLINE packet, the client enters the INIT state in order to
15 request a different address.
16

17 Entirely absent from this cited passage is a discussion of the originating network and a target
18 network. Also absent from this cited passage is a discussion of the a first address associated with
19 the originating network and a second address associated with the target address. Appellants have
20 also been unable to determine the precise teaching that corresponds to the claimed pool of pre-
21 defined addresses. Appellants, therefore, respectfully submit that the Examiner has failed to
22 properly characterize the scope and teachings of Bahl. Therefore, even if one having ordinary
23 skill in the art were motivated to modify Bahl in view of Sato, the claimed invention would not
24 result.

25
26 The above-reproduced arguments (incorporated herein) were originally presented on page
27 2, line 21 through page 6, line 11 of the First Response. The Examiner's initial response to these
28 arguments was to assert the following in the first enumerated paragraph on page 2 of the Second
29 Office Action:

Applicant's arguments on pages 1-5 of the remarks, do not comply with 37 CFR 1.111(c) because they do not clearly point out the patentable novelty which he or she thinks the claims present in view of the state of the art disclosed by the references cited or the objections made. Further, they do not show how the amendments avoid such references or objections.

The Examiner's arguments are misplaced.

First, Appellants did not amend the claims, and thus, there is no requirement to "show how the amendments avoid such reference or objections." Moreover, in response to the Appellants' arguments, the Examiner cited a passage in the second enumerated paragraph which was not previously cited in the First Office Action. Thus, by the Examiner's implicit admission, the Examiner erred in pointing out where Bahl allegedly teachings the limitations for which Bahl is being cited to teach.

Referring to the second enumerated paragraph, which is the Examiner's only substantive response to Appellants' arguments, the Examiner asserted the following:

Applicant's sole argument appears to be that Bahl does not disclose "the originating network and a target network... a first address associated with the originating network and a second address associated with the target address ... pool of pre-defined addresses." In response, Examiner directs Applicant to column 12, lines 35-41, which clearly show the pool of pre-defined addresses. Additionally, Bahl discusses that the address conflict procedures are performed when a user with a first IP address in a first network attempts to connect to a second network and receives a new IP address for that network (Col. 1, lines 28-38). Therefore, Bahl clearly shows that originating network, target network, first address associated with the originating network, and a second address associated with the target address. (emphasis added)

To be clear, based upon the Examiner's analysis, the Examiner's secondary reference of Sato is being used only for the purpose of "performing the address conflict in a VPN environment." Therefore, the Examiner's primary reference of Bahl is being used to teach all of the other limitations being recited in the claims.

For ease of reference in addressing the Examiner's analysis, all of the Examiner cited

1 passages within Bahl are reproduced below:

2 The most important configuration parameter carried by DHCP is the IP address. A
3 computer must be initially assigned a specific IP address that is appropriate to the network to
4 which the computer is attached, and that is not assigned to any other computer on that network. If
5 a computer moves to a new network, it must be assigned a new IP address for that new network.
6 DHCP can be used to manage these assignments automatically. DHCP carries other important
7 configuration parameters such as the subnet mask, address of default router, addresses of domain
8 name system (DNS) servers, addresses of time servers, etc. (column 1, lines 28-38)

9 At some point, however, it is assumed that a lack of response from the DHCP client is due to a
10 catastrophic failure of the client or a permanent removal of the client from the network. Once this
11 MaxLifeTime has passed, the IP address is then moved back to the FREE pool of IP addresses so
12 that the network administrator may then reutilize this IP address for another DHCP client machine.
13 (column 12, lines 35-41)

14 To minimize the possibility of such an address conflict, one embodiment of the DHCP
15 server performs conflict detection before assigning an address. Likewise, a DHCP client may
16 perform conflict detection through the generation of gratuitous ARPs upon getting a new IP
17 address. In this way, once it discovers the conflict, the DHCP client can send a DHCP DECLINE
18 packet to the DHCP server, thus informing it of the conflict. The DHCP server then marks the
19 address as BAD and the administrator is alerted through an alerting mechanism such as discussed
20 in the RFC2131. After sending the DECLINE packet, the client enters the INIT state in order to
21 request a different address. (column 13, lines 56-67)
22

23 The first passage is the Examiner's newly cited passage, and the Examiner alleged in the
24 underlined portion of the second enumerated paragraph reproduced above from the Second
25 Office Action that "Bahl discusses that the address conflict procedures are performed when a
26 user with a first IP address in a first network attempts to connect to a second network and
27 receives a new IP address for that network." Appellants' position is that the Examiner has
28 mischaracterized the scope and content of the applied prior art.
29

30 As claimed, the computer is connected to the first network when it attempts to connect to
31 the second network. However, this concept is not taught by Bahl. Instead, Bahl discusses what
32 happens "[i]f a computer moves to a new network" (emphasis added). By explicitly teaching that
33 the computer has moved, the computer is no longer trying to be connected to two computer
34 networks at the same time (which results in a possible conflict of network addresses). Instead,
35 by moving, Bahl removes the possibility of network address conflicts from the two networks.
36 This is the underlying problem being addressed by the claimed invention. Since this problem

1 does not arise, based upon the teachings of Bahl, most of the other concepts associated with the
2 claimed invention are also absent from the teachings of Bahl.

3
4 For example, reference is made to Figures 2-3 and 6 of Bahl, which illustrate the DHCP
5 communication between the DHCP client 200 and the DHCP Server/Relay 204. Noticeably
6 absent from these drawings is an illustration of the two networks (i.e., the originating network
7 and the target network). Instead, the communication occurs over a single network.

8
9 Referring back to the Examiner's cited passages, the second cited passage (i.e., column
10 12, lines 35-41), although referring to a pool of addresses, does not teach selecting a different
11 network addressed from a pool of pre-defined addresses, as claimed. Instead, this cited passage
12 teaches that when a DHCP client fails to respond, the IP address associated with the client is
13 returned to a "the FREE pool of IP addresses" so that the IP address can be reutilized. Thus, the
14 passage is silent as to the claimed limitations at issue.

15
16 The Examiner's final passage (i.e., column 13, lines 56-61 and column 13, lines 61-67)
17 refers to an "address conflict." However, the Examiner's citation notably omits what Bahl
18 considers to be an "address conflict." Specifically, column 13, lines 36-55 describes a situation
19 in which a DHCP client on a network "may still maintain its static IP address" despite a
20 RECLAIM command being sent, which causes the DHCP client to release its IP address. Bahl
21 describes that in such a situation "there is a possibility of IP address conflict if the address of the
22 DHCP client gets reassigned to another machine." Thus, whereas the claimed "conflict" occurs
23 when a single computer receives two network addresses that are in conflict, the "conflict"

1 described by Bahl occurs when two computers have the same IP address. Therefore, Appellants'
2 position is that the Examiner has again mischaracterized the scope and content of Bahl.

3
4 Since Bahl fails to teach the limitations for which the Examiner is relying upon Bahl to
5 teach, Appellants respectfully submit that the imposed rejection of claims 1, 7, and 13 under 35
6 U.S.C. § 103 for obviousness based upon Bahl in view of Sato is not viable.

7
8 Conclusion

9 Based upon the foregoing, Appellants respectfully submit that the Examiner's rejection
10 under 35 U.S.C. § 103 based upon the applied prior art is not viable. Appellants, therefore,
11 respectfully solicit the Honorable Board to reverse the Examiner's rejection under 35 U.S.C. § 103.

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To the extent necessary, a petition for an extension of time under 37 C.F.R. § 1.136 is hereby made. Please charge any shortage in fees due under 37 C.F.R. §§ 1.17, 41.20, and in connection with the filing of this paper, including extension of time fees, to Deposit Account 09-0461, and please credit any excess fees to such deposit account.

Date: December 8, 2008

Respectfully submitted,

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CUSTOMER NUMBER 46320

VIII. CLAIMS APPENDIX

1. A system for avoiding a network address collision, the system comprising:

a server for distributing addresses for accessing a target network;

an originating network;

a computer connected to the originating network, the computer identified on the originating network with a first address, the first address having a first network address, the computer requesting a connection to the target network, the server returning a second address having the second network address to the computer in response to the computer's request, the computer comparing the first and second network addresses to determine whether there is a conflict, upon making a determination of a conflict between the first and second network addresses, the computer reporting that the second network address is in conflict, wherein

the server is a virtual private network (VPN) server and generates a different network address in response to the computer's report by selecting the different network address from a pool of pre-defined addresses.

7. A method for avoiding a network address collision, the method comprising:

identifying a computer on an originating network with a first address, the first address having a first network address;

requesting a connection to a target network through a virtual private network (VPN) server;

returning a second address having the second network address in response to the request step;

comparing the first and second network addresses to determine whether there is a conflict;

reporting that the second network address is in conflict, upon making a determination of a conflict between the first and second network addresses; and

generating a different network address in response to the reporting by selecting the different network address from a pool of pre-defined addresses.

13. A computer readable medium whose contents cause a computer system to avoid a network address collision, the computer system having a client program and a server program, the computer system performing the steps of:

identifying a computer on an originating network with a first address, the first address having a first network address;

sending a request for a connection to a target network by the client program through a virtual private network (VPN) server;

receiving a second address having the second network address at the client program in response to the request;

comparing the first and second network addresses by the client program to determine whether there is a conflict;

reporting to the server program that the second network address is in conflict, upon making a determination of a conflict between the first and second network addresses; and

generating a different network address by the server program in response to the reporting by selecting the different network address from a pool of pre-defined addresses.

IX. EVIDENCE APPENDIX

No evidence submitted pursuant to 37 C.F.R. §§ 1.130, 1.131, or 1.132 of this title or of any other evidence entered by the Examiner has been relied upon by Appellants in this Appeal, and thus no evidence is attached hereto.

X. RELATED PROCEEDINGS APPENDIX

Since Appellants are unaware of any related appeals and interferences, no decision rendered by a court or the Board is attached hereto.